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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 51 OF 2003

DIVISION BENCH **HON. SHRI L.C. BHADOO, &**
HON. SHRI DHIRENDRA MISHRA, JJ

APPELLANT Ghansi Ram S/o Mani Ram, aged about 36 years, R/o. Village – Ulkiya (Dargapara) P.S. Sitapur, District-Sarguja (Chhattisgarh)

Versus

RESPONDENT : State of Chhattisgarh, Through D.M.-Sarguja (C.G.)

Present

Mr. Vineet Pandey, counsel for the accused/appellant.
Mr. Sudhir Bajpai, P.L. for the State/respondent.

ORAL JUDGMENT
(4th July 2007)

Per L.C. Bhadoo, J

Learned counsel for the accused/appellant commenced his argument on I.A.No. 1, application for suspension of sentence and grant of bail. This is the third bail application on behalf of the accused/appellant.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

2. Learned counsel for the accused/appellant submitted that since the accused is in detention for about 5 years and 11 months, this appeal may be heard finally, to which learned counsel for the State has no objection. Therefore, with the consent of the parties, the appeal is heard finally.

3. This appeal is directed against the judgment of conviction and order of sentence dated 28th October 2002 passed by II Additional Sessions Judge, Ambikapur in Sessions Trial No. 380/2001 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life, pay a fine of Rs.100/- and in default of payment of fine to further undergo R.I. for one year.

4. Case of the prosecution, in brief, is that on 3rd August 2001 at about 6.00 p.m. when the village Chowkidar Noharsai was going towards the vicinity, accused Ghasi met him on the way and called him. He told Noharsai that he has committed the murder of Narayan. He was carrying spade (*Fawda)* stained with blood and he said that let us go to the police station. Therefore, he took the accused on his bicycle to the place of occurrence where he saw that dead body of Narayan was lying in the pool of blood and there was a cut injury on his neck. At that time village Kotwar Balam and Ved Prakash were also with him. Thereafter, they went to the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

police station and lodged Merg intimation (Ex.P/4). Based on that First Information Report (Ex.P/3) was registered by the Station House Officer, P.S. Sitapur for commission of the offence under Section 302 of the IPC. The investigating officer left for the scene of occurrence and after giving notice (Ex.P/1) to the Panchas, prepared the inquest (Ex.P/2) on the body of deceased Narayan. Site plan (Ex.P/6) of the place of occurrence was prepared. Dead body of Narayan was sent for postmortem examination to Primary Health Center, Sitapur where Dr. M. Nikunj (PW-12) conducted postmortem and prepared the postmortem report (Ex.P/9) in which he opined that death of Narayan was due to shock, as a result of injury on the neck and the death was homicidal in nature. Weapon of offence spade was seized from the possession of the accused under Ex.P/11. After completion of investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Ambikapur, who in turn committed the case to the Court of Sessions Judge, Ambikapur from where learned II Additional Sessions Judge, received the case on transfer for trial.

5. Prosecution in order to establish the charge against the accused examined 15 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

pleaded innocence and stated that he has been falsely implicated in the crime.

6. Learned Additional Sessions Judge, after hearing counsel for the respective parties convicted and sentenced the accused/appellant as aforementioned.

7. We have heard Mr. Vineet Pandey, counsel appearing on behalf of the accused/appellant and Mr. Sudhir Bajpai, P.L. for the State/respondent.

8. Mr. Pandey, has not disputed homicidal death of Narayan. Moreover, PW-1 Naiharsai Lohar and PW-2 Madhusai Kanwar have stated that the accused attacked deceased Narayan with spade. The above evidence is corroborated by the medical evidence of Dr. M.Nikunj (PW-12) who conducted postmortem on the body of deceased Narayan and stated that there was a cut injury on the neck of the deceased, death was due to haemorrhage and shock, as a result of neck injury and it was homicidal in nature. Therefore, in view of above ocular and medical evidence it is established that death of Narayan was homicidal in nature.

9. Learned counsel for the accused/appellant argued that the accused came on the scene of occurrence without any weapon of offence, at that time deceased Narayan also came there in a drunken condition, abused the accused and said that he will kill

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

him, on which the accused in a heat of passion all of a sudden without any premeditation or preparation picked up the spade which was lying on the spot and attacked the deceased, therefore, the offence against the accused does not travel beyond Section 304-II of the IPC.

10. On the other hand, Mr. Bajpai, learned counsel for the State supported the judgment of the trial Court.

11. In order to appreciate the arguments advanced by both the parties, we have scrutinized the evidence available on record. PW-1 Naiharsai has stated that on the fateful day he along with Mannu and Madhu was sitting by the side of the road, Ghasi and Narayan also came there. At that time the accused Ghasi attacked Narayan with spade, as a result of which he sustained injury on his neck and died spontaneously. PW-2 Madhu has also corroborated the above evidence of PW-1 Naiharsai. He has stated that on the fateful day at about 6.00 p.m. in the evening he along with Mannu and Naiharsai was sitting on the Nohapasra (i.e. the place of occurrence), Ghasiram and Narayan were also present there and Ghasiram attacked Narayan with spade, as a result of which he sustained cut injury on his neck, fell down and died spontaneously. In the cross-examination this witness has stated that it is correct that there was a land dispute between accused Ghasiram and deceased Narayan. The father of accused Ghasiram

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

purchased the land from the father of deceased Narayan and Narayan was claiming possession over the said land. He has further stated in his cross-examination that Narayan came in a drunken condition and said that he will attacked Ghasiram. Both Ghasi and Narayan were armless, Narayan was saying that he will kill Ghasiram. When Narayan advanced towards Ghasiram, Ghasiram picked up the spade lying on the spot and attacked the deceased. He has further stated that Narayan used to say that he will kill Ghasiram, therefore, Ghasiram on the fateful attacked the deceased with spade which was lying on the spot. He has also stated that when the accused came on the spot, he was armless, the spade belongs to him, which was lying on the spot and picked up by the accused Ghasiram to attack the deceased. The above evidence of Madhu (PW-2) shows that the accused Ghasiram came on the spot without any arm, the weapon of offence spade belongs to this witness, Narayan also came on the place of occurrence in a drunken condition and said that he will attack Ghasiram, earlier also he used to say that he will attack Ghasiram because he was claiming possession over the land which was purchased by father of Ghasiram from the father of Narayan. Therefore, in the given circumstances, from the prosecution evidence itself it has come on record that the accused was present on the scene of occurrence without any premeditation or preparation and all of a sudden in a heat of passion when the deceased advanced towards him to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

attack, he picked up the spade lying on the ground and attacked the deceased. Therefore, the case of the present appellant is covered under Exception 4 of Section 300 of the IPC and as such, his conviction under Section 302 of the IPC, cannot be sustained.

12. In the result, the appeal partly succeeds. Conviction of the accused/appellant under Section 302 of the IPC and sentence imposed under that section are set aside. Instead thereof, he is convicted under Section 304-II of the IPC and sentenced to undergo seven years' R.I. It is stated that the accused is in detention since 5.8.2001 till today, therefore, he shall be entitled for the set off of the above detention period against the sentenced imposed upon him.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge